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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,033	07/09/2003	Samuel J. Adducci	LCB380	1538

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT PAPER NUMBER

3634

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/616,033

Applicant(s)

ADDUCCI, SAMUEL J.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-25 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This final Office action is in response to the amendment filed September 16, 2005 by which claims 1-9 were canceled and claims 19-25 were added.

#### ***Election/Restriction***

Claims 10-18 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on January 27, 2005.

#### ***Drawings***

The drawings were received on September 16, 2005. These drawings are approved.

#### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,976,014 (Brown '014).

Brown '014 discloses a rack comprising a base (at 42 and 43) which defines a front and a bottom base portion; a pair of upstanding vertical posts (16 - second row from the front, right side of the perspective view shown in Figure 2) extending from the base; a top channel (at 34, 36) horizontally extending between and connecting the vertical posts (16); the base including a center base portion (generally at 42) and a front base portion (generally at 43) whereby the center base portion (at 42) extends *generally* between the vertical posts (16) and the front base (at 43) is

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positioned in front (i.e., front of the rack is at the front, right side of the perspective view shown in Figure 3) of the vertical posts (16) and the center base portion (at 42); the center base portion (at 42) and the front base portion (at 43) including an upstanding front wall (at 36 - see Figure 1, right side of Figure 1 is the front) and an upstanding rear wall (at 34 - see Figure 1, left side of Figure 1 is the rear), whereby the front wall (36) of the center base portion (a 42) abuts (see column 2, line 8) the rear wall (34) of the front base portion (at 43).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown '014 as applied to claim 19 above, and further in view of U.S. Patent No. 5,323,916 (Salmon '916).

Brown '014 discloses the rack as advanced above.

The claims differ from Brown '014 in requiring: (a) the front and rear walls of the center and front portions to each have a horizontal flange extending from its upper edge (claim 20) whereby the horizontal flanges extend inward toward the center of the respective base portion (claim 21); and (b) the front wall of the center base portion to be welded to the rear wall of the front base portion (claim 22).

*With respect to (a)*, Salmon '916 discloses a rack having a center base portion (rear portion in Figure 7) and a front base portion (front side of Figure 7) disposed in front of the center base portion; horizontal flanges (26A and 26A') extend inwardly towards the center of the front base portion and horizontal flanges (26B and 26B') extend inwardly towards the center of the center base portion.

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*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the walls of Brown '916 with horizontal flanges for increased structural rigidity of the rack.

*With respect to (b)*, although Brown '014 does not disclose the specified elements welded together, Brown '014 does disclose the use of welding (see column 1, line 63).

*Thus*, it would have been an obvious engineering choice to one of ordinary skill in the art at the time the invention was made to have welded the specified elements together for increased securement, stability and rigidity of the rack.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown '014, alone.

Brown '014 discloses the rack as advanced above.

The claim differs from Brown '014 in requiring the front wall of the center base portion to be welded to the rear wall of the front base portion.

Although Brown '014 does not disclose the specified elements welded together, Brown '014 does disclose the use of welding (see column 1, line 63).

*Thus*, it would have been an obvious engineering choice to one of ordinary skill in the art at the time the invention was made to have welded the specified elements together for increased securement, stability and rigidity of the rack.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown '014 as applied to claim 19 above, and further in view of U.S. Patent No. 6,006,925 (Sevier '925).

Brown '014 discloses the rack as advanced above.

The claim differs from Brown '014 in requiring at least one aperture in each wall.

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Sevier '925 teaches the use of at least one aperture (42) in the wall (25).

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided each of the changes in Brown '014 with an aperture therein for increased organizational capabilities of the rack.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown '014 as applied to claim 19 above, and further in view of U.S. Patent No. 6,179,133 (Reece '133).

Brown '014 discloses the rack as advanced above.

The claim differs from Brown '014 in requiring a base angle gusset mounted on at least one wall.

Reece '133 teaches the use of a gusset (92).

*Accordingly*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Brown '014 with a gusset, as taught by Reece '133, for increased structural support and stability of the rack.

### ***Response to Arguments***

Applicant's arguments (see the top of page 9), with respect to the Salmon '916 patent, have been fully considered and in view of the amendment to the claims are persuasive. *Thus*, the rejections with respect to Salmon '916, as set forth in the previous Office action, are hereby withdrawn.

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment canceling claims 1-9 and adding claims 19-25.

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Applicant's arguments (see the paragraph bridging pages 9 and 10) filed September 16, 2005, concerning the Brown '014 reference, have been fully considered but they are not persuasive. *In particular*, the examiner respectfully disagrees that "the Brown '104 patent does not disclose an upstanding front wall of the center base portion abutting an upstanding rear wall of the front base portion". Note line 8 of column 1 in Brown '014 which states that "the runs... abut the adjacent runs".

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is 571-272-6832. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer E. Novosad  
Primary Examiner  
Art Unit 3634

October 31, 2005

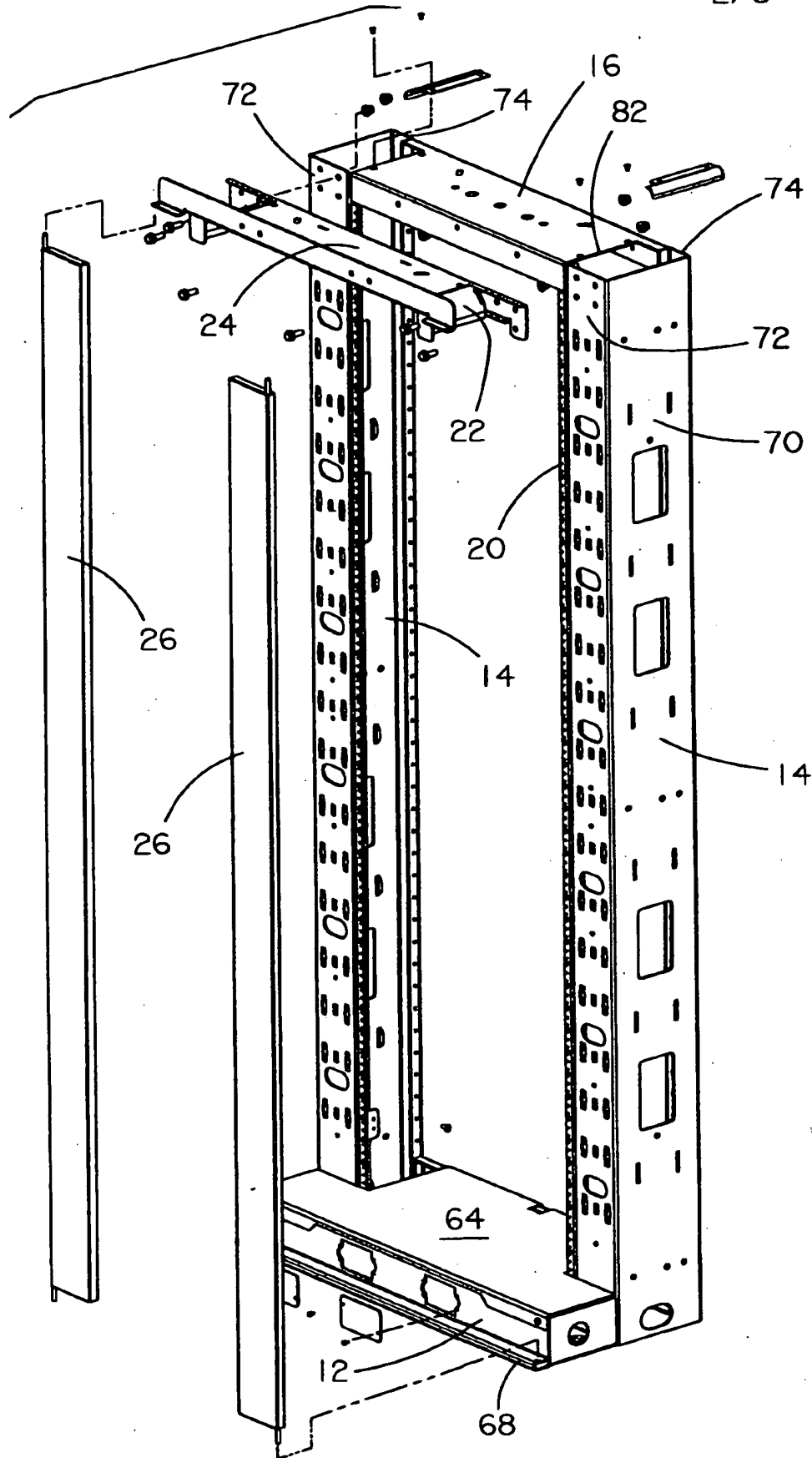




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FIG.2



Drawing Corrections  
Approved 10/3/05